



Paper No. 10

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OCT 29 2002

OFFICE OF PETITIONS

CONNORS ASSOCIATES
1600 DOVE ST
SUITE 220
NEWPORT BEACH CA 92660

In re Application of
Wasserman & Hernandez
Application No.: 10/082,364
Filed: January 4, 2002
Attorney Docket No.: 9264.2
For: METHOD AND SYSTEM FOR
TRANSFERRING FUNDS AND VIDEO
MESSAGES

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed August 27, 2002 (certificate of mailing date August 20, 2002).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on January 4, 2002 without an executed oath or declaration and filing fees. Accordingly, on March 21, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration, a surcharge for its late filing, and filing fees.

In response, on June 4, 2002 (certificate of mailing date May 20, 2002), petitioner submitted the filing fees, the surcharge, and a request for a one month extension of time and required fee (in order to obtain Mr. Hernandez' signature on the declaration). On June 27, 2002 (certificate of mailing date June 20, 2002), petitioner requested additional time to submit an executed declaration. Finally, on August 27, 2002 (certificate of mailing date August 20, 2002), petitioners filed the instant Rule 47(a) petition.

A grantable petition under 37 CFR 1.47(a) requires

- (1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

This petition lacks item (1).

As to item (1), applicant has failed to establish that Mr. Hernandez has refused to sign the declaration or cannot be reached. A successful Rule 47 petition requires either (1) a clear refusal to

join, whether expressly or by conduct, or (2) a showing of diligence in trying to find an unavailable inventor. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events.

The Office requires that the non-signing inventor be provided with a complete copy of the application as filed. The petition states that the complete application as filed was forwarded to Mr. Hernandez and that no response was received by the August 16, 2002 deadline. However, the transmittal letter of Mr. Wasserman (the person who sent the application package to Mr. Hernandez) is not among the petition papers.

The Office would like to see evidence that the application package was mailed to Mr. Hernandez, starting with the transmittal letter. Mr. Wasserman should provide a declaration/statement of facts as he is the person who attempted to contact Mr. Hernandez. Assuming the package reached Mr. Hernandez, Mr. Hernandez may have been on vacation when it arrived. The Office has no idea as to the time frame set for signing the declaration because the Office does not know when the application package was mailed/received by Mr. Hernandez.

The complete application package should be sent to Mr. Hernandez' last known address with a request that he sign the declaration. If possible, return receipt or some similar form of delivery should be utilized because that way the Office can be certain that Mr. Hernandez received the package.

Any written refusal should be included as documentary evidence in the reconsideration petition. If there is an oral refusal, the facts surrounding the refusal should be included in a declaration by a party with first hand knowledge of the refusal. If it is concluded by the 37 CFR 1.47 applicant that a non-signing inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration.

If petitioner is alleging that Mr. Hernandez cannot be located, other attempts to reach Mr. Hernandez are required. If the papers are returned, and other efforts to locate the inventor, e.g. through e-mail or computer searches (such as LEXIS) fail, then applicant will establish that the inventor cannot be reached.

Documentary evidence to support facts alleged in the affidavit or declaration should be submitted.

Pursuant to petitioner's authorization, deposit account no. 03-2830 will be charged the \$130.00 fee associated with filing a Rule 47 petition.

The undersigned assumes that the address listed on the declaration for Mr. Hernandez is his last known address. In the reconsideration petition, please confirm that this is indeed Mr. Hernandez' last known address.

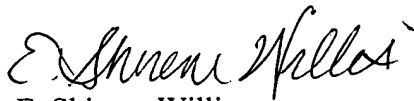
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
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Telephone inquiries should be directed to the undersigned at (703) 308-6712.



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